No. 10118

In the United States Circuit Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SCHAEFER-HITCHCOCK COMPANY, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ROBERT B. WATTS,
General Counsel,
ERNEST A. GROSS,
Associate General Counsel,
GERHARD P. VAN ARKEL,
Assistant General Counsel,
MORRIS P. GLUSHIEN,
DAVID FINDLING,
WILLIAM T. WHITSETT,
Attorneys,
National Labor Relations Board.

INDEX

AUTHORITIES CITED

468659—42——1

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 10118

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SCHAEFER-HITCHCOCK COMPANY, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case comes before the Court upon petition of the National Labor Relations Board for enforcement of its order issued against respondent pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, U.S.C., Title 29, Sec. 151, *et seq.*). This Court has jurisdiction under Section 10 (e) of the Act; respondent, an Idaho corporation, maintains its principal office and operates a plant in the State of Idaho, within this judicial circuit, where the unfair labor practices occurred.

STATEMENT OF THE CASE

Upon proceedings pursuant to Section 10 of the Act,[1] the Board, on March 12, 1942, issued its findings of fact,

[1] These, initiated by charges filed by Lumber and Sawmill Workers Union, Local No. 2614, chartered by the United Brotherhood of Carpenters and Joiners of America, affiliated with the

conclusions of law, and order (39 N. L. R. B., No. 135; R. 25–46), which may be briefly summarized as follows:

1. *Nature of respondent's business* (R. 29).—Respondent is principally engaged at plants in the States of Idaho and Minnesota in the manufacture and processing of wooden poles. All of the 105,800 gallons of creosote and approximately 10 percent of the 21,680 poles used annually at its Priest River, Idaho, plant, involved in this proceeding, are shipped to that plant from out-of-State sources, and 85 percent of the poles handled or processed there, valued at approximately $148,000, are sold and shipped to out-of-State points.[2]

2. *The unfair labor practices* (R. 30–42).—Respondent, by sponsoring and participating through supervisory employees in a meeting of its employees called to discuss their unionization, by antiunion statements and conduct of its supervisory employees, and by discharging Clifford Damschen because of his union activities, engaged in unfair labor practices violative of Section 8 (1) and (3) of the Act.

3. *The Board's order* (R. 43–46).—The Board ordered respondent to cease and desist from the unfair

---

American Federation of Labor (herein called the Union), included complaint of the Board (R. 1–5), answer of respondent (R. 5–11), hearing before a trial examiner (R. 57–257), proposed findings of fact, proposed conclusions of law, and proposed order of the Board (R. 27–28), exceptions thereto by respondent and brief in support of such exceptions (R. 11–24, 28), and opportunity for oral argument before the Board.

[2] Upon these undisputed facts (Bd. Exh. 2; R. 63–64; R. 1–2, 5), the jurisdiction of the Board is clear. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601.

labor practices found, to reinstate Damschen with back pay, and to post appropriate notices.

SUMMARY OF ARGUMENT

I. The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act.

II. The Board's order is valid and proper.

ARGUMENT

Point I

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act

A. Preliminary statement

The evidence in this case is, in almost all important respects, substantially uncontradicted. As we shall show, it overwhelmingly supports the Board's findings that immediately following the initiation by an employee, Clifford Damschen, of a movement to unionize respondent's employees at its Priest River, Idaho, plant, respondent, in violation of the Act, "sought to counteract Damschen's efforts to interest the employees in union organization and to discourage the employees from exercising their rights under the Act" (R. 35). Thus, the Board found that respondent's supervisory employees, in violation of Section 8 (1), engaged in activities and conduct and made statements which interfered with, restrained, and discouraged the adherence

of the employees to the Union. When Damschen, despite this, continued his efforts to organize the employees, he was summarily discharged in violation of Section 8 (3) and (1).

B. Respondent's violations of Section 8 (1)

Union activities began at respondent's Priest River plant in February 1941, when Damschen, an employee there, after broaching unionization to several other workers, invited a Union organizer to visit the plant (R. 67–69, 94–95). An organizer came to the plant on February 10 and saw Damschen, who then joined the Union and made plans with the organizer for an organizational meeting of the employees to be held at a local public hall the following evening (R. 69–71, 97). Damschen publicized the meeting that day and the next day by personally speaking to a majority of his 25 or 26 fellow workers and urging them to attend (R. 70–71, 74, 97).

Respondent, acting through Superintendent Conlee and Supervisor Wear,[3] lost no time in interfering with and opposing the Union movement. On February 11, the very day the first meeting of the Union was to be held, Wear engaged an employee in conversation concerning unions, asked the employee what he thought of the desirability of a union, and suggested that "it was better to let [a union] alone" until respondent's president, Schaefer, "could advise us to join a union,

[3] Conlee was the highest ranking official in charge of the plant and there is no question as to his supervisory status (R. 205, 235, 241). While respondent does challenge Wear's supervisory status, its responsibility for his antiunion conduct is perfectly clear, as we point out below, pp. 10–11.

and what union" (R. 138–140, 143–145). That night only Damschen and two others of respondent's employees attended the Union meeting (R. 97). It was agreed, however, to hold another organizational meeting on February 19 (R. 98–99, 71). This meeting was also publicized by Damschen (*ibid.*).

Supervisor Wear now decided, with two other employees,[4] to hold a countermeeting of the employees on February 15 for the asserted purpose of discussing the question of unionization without the presence of a Union organizer (R. 178–179). Wear assisted in making arrangements for the meeting and urged employees to attend it (R. 72–73, 99–100, 140, 153–154, 162–163, 167 169, 178, 207, 219). Occurrences at the meeting show that its underlying purpose was to discourage the employees from adherence to the Union and to impress upon them the supposed advantages of individual, over collective, dealings with their employer.

The meeting was attended by Superintendent Conlee, Supervisor Wear, and about 20 of respondent's 25 or 26 employees (R. 74, 101, 141, 149, 165, 170).[5] Wear

---

[4] One of these was George Cronkright, an inspector, who had been working for respondent for 17 years (R. 152–154). His wage rate was the same as that of Wear, and exceeded that of any other employee in the yard except Superintendent Conlee (R. 252–254). His duties required him, as Conlee testified, to "kind of oversee the work the others are doing," to inspect poles, and to direct the work of the hauling teams, who were "more or less under his direction" (R. 237).

[5] Superintendent Conlee testified that he knew the purpose of the meeting, "to find out what the views of the employees were with reference to a union" (R. 219), and therefore "kind of hesitated" to go; nevertheless, he attended because Wear and others "kind of urged me and said it would be a good thing if I went up there, that they would like to have me" (R. 207–208).

introduced Conlee to the gathering and declared that Conlee had "had some good experience with unions back east and I believe * * * can tell us a whole lot about them" (R. 74, 102–103, 141, 179–181).[5] Conlee thereupon delivered an anti-union diatribe, telling the assembly, according to Damschen's uncontradicted testimony,[6] that he believed everything was "going rosy in the yard"; that he thought they "were getting along swell"; that if any employee had any grievances they "could come" to Conlee who would himself correct the difficulty or take the matter up with Company officials; that he had had "experience" with "unions back east"; that the unions had called strikes as a result of which the men "lost much more" than they had gained; and that unions "can call you out on strike any time they want to and tax you on your dues" (R. 75, 103). At this point in Conlee's discourse, Damschen, who was present, declared that it was his understanding that members of each local union had a right to vote among themselves to determine whether they were to be taxed or to go on strike (R. 75). Conlee replied, "Yes, but

---

[5] Conlee had previously been superintendent of respondent's Minneapolis plant when the employees there had engaged in strikes in 1935 or 1936 and again in 1938 (R. 209, 218–219).

[6] There was no substantial contradiction between the testimony in this regard of Damschen, and that of the several witnesses called by respondent (R. 157, 171, 197, 209–211, 220–221). Conlee not only did not deny the foregoing version of his remarks at the meeting but when asked on direct examination by respondent's counsel what his "version of what transpired at that meeting" was, replied that "it is a good deal as has been testified here" (R. 205). We discuss below (pp. 9–10) the significance of the alleged fact, testified to by several of respondent's witnesses, that Conlee's remarks may have been prefaced by the statement that respondent was not "opposed to union labor" (R. 157, 171, 197, 203, 209).

they tell you how to vote" (*ibid.*). When Damschen then protested that a Union organizer ought to be present to give the employees the Union's viewpoint and "make it a two-sided discussion" (R. 75, 105, 141–142), Conlee retorted, "That would not be a two-sided discussion. Them fellows have answers for every question you ask. They can paint some beautiful pictures, but I never seen one developed" (*ibid.*).

During the meeting, Damschen made his militant pro-Union attitude even clearer by declaring that he, and he believed other employees as well, were dissatisfied with their wages; by announcing that a Union organizer would be present in Priest River on February 19; and by successfully opposing a suggestion for an immediate vote among the employees on the question of unionization, on the ground that the men had not had an opportunity to hear a Union organizer and thus learn "both sides of the story" (R. 76–77, 142, 147–148, 171).

Following the events described, Damschen was the only one of respondent's employees who dared appear at the Union's meeting on February 19 (R. 106–107). Supervisor Wear thereafter again declared to Damschen, according to Damschen's uncontradicted testimony, that the employees "had been getting along pretty well and he hated to see a union come in and break us up," and assured Damschen, who complained concerning his wages, that "we can straighten things out without a union" (R. 78). Nevertheless, Damschen continued to urge the employees to join the Union until he was discriminatorily discharged about 4 weeks later (R. 106–107, *infra,* pp. 13–17).

468659—42——2

Upon the foregoing facts, substantially uncontroverted in all essential respects, the Board properly concluded (R. 35, 43) that respondent had violated Section 8 (1) of the Act. Respondent's sponsorship and participation, through Superintendent Conlee and Supervisor Wear, in the meeting of February 15, for the avowed purpose of discussing unionization of the employees without the presence of a Union organizer (*supra,* p. 5), was itself a flagrant breach of the Act, which reserves matters of self-organization exclusively to the employees.[8] In addition, Conlee's declaration at the meeting that things were "going rosy" in the absence of any union; his suggestion that the employees submit their grievances to him directly; his disparagement of unions as organizations which call strikes and levy assessments without regard to the desires of their members, and which mislead their members through glowing pictures which never materialize—all these declarations, delivered by the highest official in the plant, were plainly calculated to impress upon the employees that respondent did not want them to join the Union or bargain other than individually, that their best interests lay in continued reliance upon their employer's unilateral generosity, and that adherence to the Union would result in financial cost to them without compensating benefits. Such disparagement of unions and discouragement of collective organization constitute

[8] E. g., *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 80; *National Labor Relations Board* v. *Pacific Gas & Electric Co.*, 118 F. (2d) 780, 787–788 (C. C. A. 9); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 786 (C. C. A. 9), cert. denied, 312 U. S. 678.

a well-recognized form of interference, restraint, and coercion.[9] Similarly, Supervisor Wear's suggestion that the employees ought not join a labor organization until respondent's president approved and selected one, his declaration to Damschen that the employees were getting along well and he "hated" to see a union "break us up," and his asserted belief that Damschen's wages could be satisfactorily adjusted without the assistance of a union (*supra,* pp. 4–5, 7) were, as the Board found (R. 35), plainly calculated, in light of all the circumstances, "to make clear to the employees that the respondent did not desire that its employees join the Union." Respondent thus further intruded unlawfully upon the organizational activities of its employees.[10]

Respondent has urged various defenses in a hopeless effort to avert the authority of the cited and other cases, establishing the propriety of the Board's findings of Section 8 (1) violation. None of the defenses has merit.

The alleged fact that Conlee's statements at the meeting of February 15 may have been accompanied by a declaration that respondent was not opposed to unionization of the employees (see note 7, p. 6, *supra*), did not, as respondent suggests, negative their coercive effects upon the employees or dissipate the restraining effects of Conlee's presence. In the light of what ac-

---

[9] E. g., *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 518–520; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 592–596; *National Labor Relations Board* v. *Pacific Gas & Electric Co.*, 118 F. (2d) 780, 783, 787–788 (C. C. A. 9); the *Sunshine Mining* case, *supra.*

[10] E. g., the *Machinists* case, 311 U. S., at 78; the *Pacific Gas & Electric* case, 118 F. (2d) at 783, 787–788.

companied it, Conlee's statement of neutrality, if made, must necessarily have been understood by the audience of employees as mere lip-service to the principle of employee freedom of choice. In any event, it is settled that it was for the Board to appraise the effect of the statements in light of the whole record and the totality of respondent's conduct. *National Labor Relations Board* v. *Virginia Electric & Power Co.,* 314 U. S. 469. The Board's finding that even if Conlee's antiunion harangue was prefaced by a declaration of neutrality, "that would not vitiate the effect of his open attack on the Union and unions generally" (R. 34, note 3), was entirely reasonable, hence conclusive.

Respondent's claim that Wear's antiunion activities were improperly attributed to it by the Board because, as respondent asserts, he was not a supervisory employee, is also without merit. Wear admittedly had been in complete charge of the plant for several months prior to Conlee's coming there in 1939, he took Conlee's place when Conlee was absent from the yard at various times, and he regularly transmitted Conlee's orders to the employees as to their work (R. 72, 137–138, 173–177, 188, 206). Conlee admitted that Wear had authority to recommend hiring and discharge (R. 206), and the employees' testimony at the hearing shows that they recognized and understood that Wear was a "straw-boss" (R. 72, 137). In these circumstances Wear plainly enjoyed a supervisory status sufficient under the controlling decisions to establish employer liability under the Act. *International Association of Machinists* v. *National Labor Relations Board,* 311 U. S. 72, 79–80;

National Labor Relations Board v. *Link-Belt Co.*, 311 U. S. 584, 599; *H. J. Heinz Co.* v. *National Labor Relations Board,* 311 U. S. 514, 520–521; *National Labor Relations Board* v. *Pacific Gas & Electric Co.*, 118 F. (2d) 780, 787 (C. C. A. 9).

Nor is it material, as respondent contends, that Conlee and Wear, in their antiunion conduct and utterances, may have acted beyond the scope of their authority and contrary to respondent's desires or instructions. It is settled that, regardless of respondent's responsibility for their interference on principles of *respondeat superior,* respondent was, in view of the supervisory status of these men, "within the reach of the Board's order to prevent any repetition of such activities and to remove the consequences of them upon the employees' right of self-organization, quite as much as if [it] had directed them." The *Heinz* case, *supra,* at p. 521; the *Pacific Gas & Electric Co.* case, *supra,* at pp. 787–788; *Swift & Co.* v. *National Labor Relations Board,* 106 F. (2d) 87, 93 (C. C. A. 10); *Consumers Power Co.* v. *National Labor Relations Board,* 113 F. (2d) 38, 44 (C. C. A. 6).

Respondent's further claim that the statements and activities of Conlee and Wear were protected by the First Amendment to the Constitution also requires little comment. The right of free speech does not, of course, include the right to coerce employees, through speech or otherwise, and even expressions of opinion by an employer may be of such nature as to coerce and intimidate employees in violation of the Act. *National Labor Relations Board* v. *Virginia Electric & Power*

Co., 314 U. S. 469, 477; *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 786, (C. C. A. 9), cert. denied 312 U. S. 678; *National Labor Relations Board* v. *Federbush Co.*, 121 F. (2d) 954, 957 (C. C. A. 2); *National Labor Relations Board* v. *Chicago Apparatus Co.*, 116 F. (2d) 753, 756–757 (C. C. A. 7). Here respondent's assistance in the instigation of, and its participation in, the meeting of its employees on February 15, at a time when the employees were engaged in their first tentative efforts toward collective action, and the unambiguous antiunion statements of its highest plant official at that meeting, advocating individual dealing, disparaging unions, and warning the men against collective bargaining, were more than mere expressions of opinion. Viewed in their setting, there can be no doubt that the holding of the meeting and Conlee's remarks at the meeting were designed, as the Board found (R. 35), to counteract Damschen's efforts on behalf of the Union and to discourage the adherence of the employees to that organization, a flagrant interference with employee rights of free choice. So, too, Wear's antiunion statements (*supra*, pp. 4–5, 7), considered, as they were by the Board (R. 35), in the light of the meeting of February 15 and the "totality of the Company's activities during the period in question" (*National Labor Relations Board* v. *Virginia Electric & Power Co.*, 314 U. S. 469, 477), were clearly coercive and not mere expressions of opinion. Respondent's reliance upon the First Amendment is no more than a transparent attempt to escape the consequences of this plainly coercive conduct, con-

duct which includes acts as well as speeches. The First Amendment affords no such shield."

C. The discriminatory discharge of Damschen, in violation of Section 8 (3) and (1)

We have already described Damschen's initiative and leadership in the movement to organize respondent's employees (*supra*, pp. 4–5, 6–7). It was he who invited the Union to seek members at respondent's plant, and he was the only one of respondent's employees to join the Union thereafter and to engage in activities on its behalf. He made his prounion attitude clear not only by his persistent union activities among the general body of employees but by his outspoken opposition to the antiunion activities of Conlee and Wear in connection with the meeting of February 15, 1941. He was the only one of respondent's employees subsequently to attend the union meeting on February 19. Despite respondent's opposition and the apparent lack of success of Damschen's efforts, he continued his prounion activities among the employees

[11] Since the decision in *National Labor Relations Board* v. *Virginia Electric & Power Co.*, *supra*, employers in three cases have sought certiorari contending, as here, that the First Amendment protected antiunion statements made by them, and urging that the lower courts had therefore improperly enforced the Board's findings of Section 8 (1) violation; in each case certiorari was denied by the Supreme Court. *Norristown Box Co.* v. *National Labor Relations Board*, 124 F. (2d) 429 (C. C. A. 3), certiorari denied (No. 993, October Term, 1941) April 13, 1942; *North Electric Mfg. Co.* v. *National Labor Relations Board*, 123 F. (2d) 887 (C. C. A. 6), certiorari denied (No. 931, October Term, 1941) March 16, 1942; *National Labor Relations Board* v. *Algoma Net Co.*, 124 F. (2d) 730 (C. C. A. 7), certiorari denied (No. 1256, October Term, 1941) June 8, 1942.

thereafter until, on March 19, he was summarily discharged (R. 79–80, 107–108). Conlee gave him no detailed explanation, merely stating, "We are cutting down the force. We won't be needing you any more" (R. 79, 108).

Immediately following his dismissal, Damschen informed Union President Butler of the matter (R. 83), and on March 22, Butler and another union representative, Paddock, called at the plant with Damschen to protest the dismissal and seek his reinstatement (R. 84, 124–125). They first saw Superintendent Conlee, who declared in answer to Paddock's question, that Damschen had been let go because "they were reducing" the force. Paddock then asked when Damschen would be recalled, to which Conlee replied, "We are not going to put him back on the job." When Paddock inquired why, Conlee answered curtly, "That is none of your damn business" (R. 124–127). Later the same day, Butler, Paddock, and Damschen saw President Schaefer. The reason which Schaefer assigned for Damschen's dismissal was not the same as that which Conlee had offered. Schaefer asserted that Damschen had been discharged because he was "rough on the machinery," that Schaefer had "caught" Damschen "jerking the tractor," and that he had therefore ordered Conlee to dismiss him (R. 84–85, 109). Schaefer also declared, according to Damschen's undenied testimony, that he had heard that Damschen was dissatisfied with his wages and "By God, if a man ain't satisfied there, he can quit" (R. 85). Schaefer's explanation was further inconsistent with Conlee's testimony at the hearing to the effect that Damschen's work had been "quite

satisfactory," that he had "nothing particularly" against Damschen, and that he had discharged Damschen *without* consultation or prior discussion of the matter with Schaefer or anyone else (R. 221, 224–225); and with the undisputed fact that Damschen had never received any criticism of his work (R. 86–87).

At the time of his dismissal, Damschen had been regularly employed by respondent at its Priest River plant for about 6 years (R. 67–68, 89–90). At least since Superintendent Conlee's coming to the plant in 1939, he had admittedly never previously been laid off except when the entire yard was either completely or almost completely shut down (R. 68, 226). Yet he was the only employee released on or about March 19 (R. 114, 226). The dismissal was further contrary to respondent's usual practice in that respondent usually gave preference to employees who, like Damschen, had worked for it for 2 years or more (R. 88, 110, 113–114, 116–118, 119–120); nevertheless it now released Damschen although he had greater seniority than a majority of the employees, some of whom had but recently been hired by respondent (R. 82–83, 225). It is also significant that Damschen was never thereafter recalled to work despite the facts that his work had been "quite satisfactory," as Conlee himself admitted (R. 221, 86–87), and that respondent subsequently needed men to do precisely the same work as Damschen had been doing at the time of his discharge or other work which he had also performed on occasion (R. 66–67, 97–98, 111, 182–183, 214–215, 228, 233). Instead, respondent hired many new employees, increasing its staff 2 months later by about 35 men (R. 74, 97–98, 215, 223, 233–234).

Before the Board, Conlee testified, as respondent maintained, that Damschen was in fact dismissed on March 19 solely because one of the three tractors then used at the plant was discontinued (R. 212, 214–215, 221). He then admitted, however, that the tractor which was discontinued was not the one operated by Damschen (R. 222), and that another tractor had been available to which no one was regularly assigned (R. 226–227). He was then asked why Damschen was not assigned to this tractor, and replied, "Well, I just did not want Damschen, I guess was the reason" (R. 227). He proceeded to admit, further, that within 2 weeks after March 19 respondent replaced the discontinued tractor with a new one (R. 227–228), and that new men were subsequently hired for tractor work in place of Damschen (R. 228, 182–183). His testimony then continued as follows (R. 228–230):

> Q. Why didn't you rehire Damschen?
>
> A. Well, Mr. Damschen never came to me for re-employment.
>
> Q. Well, you knew that he had requested re-employment on the 22nd day of March, did you not? [See p. 14, *supra.*]
>
> A. Yes.
>
> Q. Then why didn't you notify him? You knew where Damschen lived?
>
> A. Yes, sir.
>
> Q. You knew Damschen had worked for the company for a number of years?
>
> A. Yes, sir.
>
> Q. Do you have any other explanation for not offering him re-employment?

A. None further than the statement I made a little while ago that I just did not want him any more.

Q. Isn't it true, Mr. Conlee, that one reason and the principal reason that you did not offer Damschen employment when business picked up was because he had taken this matter up with the union?

A. I don't think that that was a particular reason. I think it may have had some bearing on it.

Q. Well, that was one of the reasons, wasn't it?

A. Not the particular reason; no.

Q. Well, was it a reason?

A. I would not say it was a reason.

Q. The only reason that you can offer then is that you just did not want him?

A. Yes, sir.

Q. You did not like Damschen?

A. Oh, I had nothing particularly against him.

Q. You just did not want him to work for you?

A. Just did not want him to work for me.

Q. And yet his work was quite satisfactory?

A. Yes, quite.

Upon this state of the record, the Board's finding that Damschen was discharged because of his union membership and activities was plainly mandatory. Elaboration upon the propriety of the finding in light of the evidence above reviewed would, we feel, be but an imposition on this Court.

Point II

The Board's order is valid and proper

The Board's order (R. 43–46) requires respondent to cease and desist its unfair labor practices, to reinstate

Damschen with back pay, and to post appropriate notices. Such provisions are the usual and judicially approved remedial measures upon findings of violations of Sections 8 (1) and 8 (3) of the Act. The provision of the order, restraining respondent from "in any other manner" interfering with, restraining, or coercing its employees' exercise of the rights guaranteed in Section 7 of the Act is also proper. Such a provision was recently enforced by the Supreme Court upon findings of violations of Sections 8 (1) and 8 (3) in *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.,* 62 S. Ct. 960, enforcing 26 N. L. R. B. 1182, 1235; *National Labor Relations Board* v. *Electric Vacuum Cleaner Co.,* 62 S. Ct. 846, enforcing 18 N. L. R. B. 591, 640; and *Phelps Dodge Corp.* v. *National Labor Relations Board,* 313 U. S. 177, enforcing in this respect 19 N. L. R. B. 547, 603. See also, *National Labor Relations Board* v. *Air Associates, Inc.,* 121 F. (2d) 586, 592 (C. C. A. 2); *F. W. Woolworth Co.* v. *National Labor Relations Board,* 121 F. (2d) 658, 662 (C. C. A. 2); *National Labor Relations Board* v. *Entwistle Mfg. Co.,* 120 F. (2d) 532, 536 (C. C. A. 4); *American Smelting & Refining Co.* v. *National Labor Relations Board,* 10 L. R. R. 492, 493 (C. C. A. 5), decided May 27, 1942; *National Labor Relations Board* v. *Bersted Mfg. Co.,* 10 L. R. R. 516, June 6, 1942 (C. C. A. 6), amending 124 F. (2d) 409; *National Labor Relations Board* v. *Newberry Lumber and Chemical Co.,* 123 F. (2d) 831 (C. C. A. 6); *Wilson & Co.* v. *National Labor Relations Board,* 124 F. (2d) 845, 848 (C. C. A. 7). Cf. also, *National Labor Relations Board* v. *Hollywood-Maxwell Co.,* 126 F. (2d) 815, 819 (C. C. A. 9); *National Labor*

Relations Board v. *Pacific Gas & Electric Co.*, 118 F. (2d) 780, 789–791 (C. C. A. 9).

CONCLUSION

It is respectfully submitted that the Board's findings are supported by substantial evidence, that its order is valid, and that a decree should issue enforcing the order in full.

ROBERT B. WATTS,
General Counsel,
ERNEST A. GROSS,
Associate General Counsel,
GERHARD P. VAN ARKEL,
Assistant General Counsel,
MORRIS P. GLUSHIEN,
DAVID FINDLING,
WILLIAM T. WHITSETT,
Attorneys,
National Labor Relations Board.

JUNE 1942.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. V, Sec. 15 *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.

U. S. GOVERNMENT PRINTING OFFICE: 1942